

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

U.S. DISTRICT COURT  
DISTRICT OF MAINE

2003 JUN 24 P 3: 29

BANGOR PUBLISHING COMPANY, )  
a corporation with its principal )  
place of business in )  
Bangor, County of Penobscot, )  
State of Maine, )

Plaintiff )

vs. )

U.S. DEPARTMENT OF LABOR, )  
External Affairs Office, )  
Wage and Hour Division, an agency )  
of the United States government, )  
Washington, D.C., )

Defendant )

BY \_\_\_\_\_  
DEPUTY CLERK

Case No. 03-CV-114-B-S

**COMPLAINT FOR**  
**INJUNCTIVE AND**  
**DECLARATORY RELIEF**

1. This is an action under the Freedom of Information Act, Title 5, United States Code, §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records withheld from Plaintiff Bangor Publishing Company ("Plaintiff") by Defendant U.S. Department of Labor ("Defendant").

2. This Court has jurisdiction over this matter under Title 5, United States Code, §552(a)(4)(B). This Court also has jurisdiction over this matter pursuant to Title 28, United States Code, §1331, because this action arises under the Freedom of Information Act.

3. Venue is proper in the District of Maine pursuant to Title 5, United States Code, §552(a)(4)(B), as Plaintiff's principal place of business is located in Penobscot County.

## FACTUAL ALLEGATIONS

4. Plaintiff Bangor Publishing Company is a Maine corporation with its principal place of business in Bangor, Penobscot County, Maine.

5. Defendant U.S. Department of Labor is an executive department of the United States government.

6. Defendant is an agency within the meaning of Title 5, United States Code, §552(f).

7. Defendant has possession and control over the records Plaintiff seeks.

8. By letter delivered to the U.S. Department of Labor, Wage and Hour Division on May 14, 2003, Plaintiff requested access to certain public records, including:

(a) any and all records pertaining to Case File Number 1238036 involving Evergreen Forestry Services of Sandpoint, Idaho, and Peter Smith, III of Sandpoint, Idaho;

(b) all documents since September of 2002 pertaining to the federal status and eligibility of Peter Smith, III as an active farm labor contractor and/or as a farm labor contractor employee;

(c) all documents since September 2002 pertaining to the status and eligibility of Evergreen Forestry Services to act and operate as a farm labor contractor and/or as a farm labor contractor employee;

(d) all documents since September 2002 pertaining to the status and eligibility of Peter Smith, III as an investor, but not an active business partner, in a business that performs as a farm labor contractor and/or as a farm labor contractor employee;

(e) all documents since September 2002 addressed to Peter Smith, III and Evergreen Forestry Services and/or Peter Smith, III and Progressive Environmental LLC

outlining what actual duties Peter Smith, III can perform as an investor in Progressive Environmental LLC but not as an active business partner in Progressive Environmental LLC;

(f) any federal documentation that includes a definition of what actual business duties or actions an investor can legally perform in a farm labor contractor and/or farm labor contractor employee business if that investor has been notified by the U.S. Department of Labor that he cannot be an active farm labor contractor and/or a farm labor contractor employee;

(g) all documents since September 2002 pertaining to any new U.S. Department of Labor investigation of Peter Smith, III and his co-ownership of Progressive Environmental LLC of Coeur D'Alene, Idaho, and/or Tum Tum, Washington;

(h) all documents since October 2001 pertaining to the status and eligibility of Progressive Environmental LLC to act and operate as a farm labor contractor and/or as a farm labor contractor employee;

(i) all federal H-2B forestry worker applications, whether rejected or approved, and certificates administered to Progressive Environmental LLC for forestry work to be performed in Maine, Washington, and Idaho in 2003;

(j) all documents pertaining to Bruce Campbell of Post Falls, Idaho, Progressive Forestry Services, and/or Progressive Environmental LLC, in an ongoing overtime dispute with the U.S. Department of Labor;

(k) all federal documents pertaining to the formation and registration of a limited liability corporation, including applications, whether approved or rejected, for federal tax numbers, filed within the U.S. Department of Labor or Internal Revenue Services by Progressive Environmental LLC beginning October 2001 through May 14, 2003.

A copy of the May 14, 2003 letter is attached hereto as *Exhibit A*.

9. More than twenty working days have passed since Defendant received Plaintiff's May 14, 2003 request. Plaintiff has not received a determination from Defendant concerning the request, nor has Defendant produced any materials in response to Plaintiff's request.

10. Plaintiff has a statutory right to disclosure of the records requested in its May 14, 2003 letter under Title 5, United States Code, §552.

11. There is no legal basis for Defendant's failure to respond to Plaintiff's request in a timely manner.

12. Plaintiff has exhausted its administrative remedies.

**WHEREFORE**, Plaintiff respectfully requests this Court to declare that Defendant's failure to disclose the records requested by Plaintiff is unlawful; order Defendant to make the requested records available to Plaintiff on an expeditious basis; award Plaintiff its costs and reasonable attorneys' fees in this action, as provided by Title 5, United States Code, §552(a)(4)(E); and grant such other and further relief as the Court may deem just and proper.

Dated at Bangor, Maine, the 24<sup>th</sup> day of June, 2003.

PLAINTIFF, Bangor Publishing Company,

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